

The complaint

Mrs M complains about the decision by Hiscox Insurance Company Limited ('Hiscox') to decline indemnity for her motor insurance claim following an accident.

Some of Mrs M's dissatisfaction is about the actions of Hiscox's appointed agents. As Hiscox have accepted responsibility for the actions of those agents, in my decision any reference to Hiscox should be interpreted as also covering the actions of their agents.

What happened

The background to this complaint is well known to Mrs M and Hiscox. Rather than repeat in detail what's already known to both parties and because I acknowledge this accident was a very traumatic experience for Mrs M, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mrs M was involved in a collision with two parked cars on 25 September 2023. Emergency services attended the scene and she was taken into hospital. Whilst at the hospital, a blood sample was taken. Mrs M later gave permission for the sample to be tested. On 29 September 2023 Mrs M's partner notified Hiscox that there had been an accident.

Some months later, Mrs M received a court summons related to the accident. Mrs M pleaded not guilty to a charge of 'drug driving'. A hearing date was set for December 2024. In September 2024, the charges against Mrs M were dropped as a prosecution was 'not needed in the public interest'.

Hiscox proceeded to settle the two third party claims against Mrs M's policy, but they declined to offer indemnity due to the presence of MDMA in Mrs M's tested sample. They said this showed that Mrs M was under the influence at the time of the accident – which is a policy exclusion. Mrs M made a complaint and Hiscox didn't uphold it. As Mrs M remained unhappy, she referred her complaint to our Service for an independent review.

Our Investigator recently considered the complaint but didn't recommend that it be upheld. As the dispute remains unresolved, the complaint has now been referred to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

I understand this is a very emotive complaint and it's not my intention to cause further distress for Mrs M. I'm also very sorry to hear of the physical and emotional repercussions of this accident.

The scope of my decision

The role of our Service in this complaint is to decide, on balance, whether Hiscox have fairly investigated the claim based on the available evidence before reaching their decision to not offer indemnity - in line with the policy terms.

It's not our role to determine the sequence of events that led to the accident occurring. It's important to make the distinction that the threshold for a criminal prosecution (beyond reasonable doubt) is different to the test (on the balance of probabilities) that I'll be applying in this complaint. In addition, the decision by the CPS to not proceed with a prosecution against Mrs M doesn't automatically mean that Hiscox have acted unfairly when declining to offer indemnity for damage to Mrs M's car.

Mrs M has referred to the absence of reckless or dangerous driving, but that is not the exclusion Hiscox have relied on when declining to offer indemnity – so I won't comment further on it.

Hiscox dealt with the third-party claims as I'd have expected them to and as they don't form the basis of this complaint, I won't comment further on them.

My key findings

The starting point with any insurance claim is the insured (Mrs M) must be able to show (within reason) that the circumstances of the claim are as presented. If the policy holder can satisfy this test, the onus then passes to the insurer to either settle the claim, or show that they can fairly rely on a policy term to limit their outlay or decline the claim.

The policy exclusion relied on by Hiscox (bold added for Ombudsman's emphasis):

*"4. loss or damage caused by or resulting from any driver having a blood alcohol level exceeding the limit prescribed by the United Kingdom Road Traffic Act 1988 or any similar or successor legislation **or under the influence of any illegal substance.**"*

Hiscox relied on the above because Mrs M's blood sample returned a level of MDMA above the legal limit. Mrs M has questioned the validity of that result for several reasons including:

- she says she'd not knowingly taken MDMA before the accident; and
- she was already taking medication and was prescribed medication (ketamine, fentanyl) whilst in hospital – so a false positive was a possibility; and
- the sample wasn't tested until a few weeks after the accident – so it could've been cross contaminated.

I've thought very carefully about this (based on the available evidence) and whether Hiscox have acted fairly and in line with the policy terms.

Mrs M's defence to the intended prosecution was based on whether MDMA showed in her blood sample because of the medication prescribed to her by emergency services and also whether the procedure for consent for drugs had been followed correctly. The response of the CPS was that the decision to not proceed was: *'because a prosecution is not needed in the public interest.'* This is important, as it *doesn't* mean that the reason provided by Mrs M around the evidential standard (validity of the blood test results) was endorsed - it simply means the CPS decided that a prosecution was no longer in the public interest:

<https://www.cps.gov.uk/about-cps/how-we-make-our-decisions#group-section-Stage-two-the-public-interest-rRgpSYWXbY> In any case, a criminal conviction doesn't have to occur in order for Hiscox to fairly be able to rely on the relevant policy term.

I've also carefully noted that Mrs M told Hiscox in her interview that she *hadn't* taken the substance in question prior to the accident, but on the other hand she's also accepted that she doesn't remember anything from shortly before the accident:

"24. I cannot say if I had drunk any alcohol or if I had taken any drugs in the previous 24 hours."

I've also noted that Mrs M didn't raise any questions about the validity of the blood test evidence in her interview with Hiscox and I find it fair that they've placed appropriate weight on that statement:

*"...you have not supplied any evidence to support your suggestion that the blood samples were stored incorrectly, contaminated or spoiled. **We also note that you did not raise concerns about the veracity of the blood tests when you were interviewed by [Hiscox's agent] on 23 May 2024.**"*

Mrs M refused consent for Hiscox to request and review her medical records and although she has referred to information available online about what can cause false positive results, she's not provided any compelling supporting evidence to explain how the substance in question was returned in her blood sample.

I've considered if any mitigation applies here that would mean Hiscox have acted unfairly. But I've not found any. I'm satisfied that Hiscox gave Mrs M a fair opportunity to present any supporting evidence whilst investigating her claim and later complaint – on multiple occasions.

Summary

Overall, when I've considered the available evidence, I find that Hiscox have fairly and reasonably considered the available evidence before reaching their position to decline claim indemnity for damage to Mrs M's car. I don't seek to interfere with it.

I find the service provided by Hiscox to be adequate, and they fairly responded to the claim when made. It wasn't unusual that they chose to carry out further claim validation checks – particularly when the intended prosecution information came to light.

My decision will of course disappoint Mrs M, but it ends our Service's involvement in trying to informally resolve her dispute with Hiscox.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 26 August 2025.

Daniel O'Shea
Ombudsman